

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RACHEL B. UDELL	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
MICHAEL J. ASTRUE,	:	
Commissioner of the	:	No. 12-944
Social Security Administration,	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of June, 2013, after careful and independent review of the Report and Recommendation of Timothy R. Rice, United States Magistrate Judge, it is hereby **ORDERED** as follows:

1. The Report and Recommendation be **APPROVED** and **ADOPTED**;
2. The Plaintiff's Request for Review be **GRANTED**; and
3. The matter is **REMANDED** to the Commissioner for further review consistent with Magistrate Judge Rice's Report and Recommendation.¹

¹ While this court must uphold any factual determination made by the administrative law judge (ALJ) supported by substantial evidence, a decision supported by substantial evidence yet based upon incorrect legal standards may be overturned. Payton v. Barnhart, 416 F. Supp. 2d 385, 387 (E.D. Pa. 2006). In this case, the ALJ failed to consider whether the Plaintiff suffered from a medically determinable mental impairment in the form of an anxiety disorder and whether it constituted a severe impairment. The ALJ cannot reject evidence or simply ignore evidence for no reason or for the wrong reason. Further, the Commissioner has not filed any objections identifying factual errors in the magistrate's report or pointing to other evidence which would render the magistrate's conclusions unsupported by the record. Accordingly, and for the reasons stated in the magistrate's Report and Recommendation, this Court enters judgment in favor of the Plaintiff.

BY THE COURT:

/s/ Petrese B. Tucker

Hon. Petrese B. Tucker, C.J.